

APPEAL NO. 010051

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 6, 2000. With regard to the only issue before her, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. B, a chiropractor, as an alternate doctor.

The appellant (self-insured) appealed, contending that the respondent (claimant) improperly sought to change treating doctors in order to secure a new medical report taking the claimant off work. The claimant responded, urging that the Commission had not abused its discretion in approving the appointment of Dr. B.

DECISION

Affirmed.

It is undisputed (stipulated) that the claimant sustained an extremely serious injury on _____, when he was crushed between two garbage trucks. The injuries included, among others, a double rupture of the aorta, ruptured spleen, multiple fractures of the left rib cage, and sternum, punctured left lung, and other fractures. The claimant was treated by a number of specialists and eventually Dr. P became the treating doctor. Among the various referrals and consultations Dr. P referred the claimant to Dr. F for pain management. The claimant began the pain management program on May 9, 2000, dropped out, and then returned to the program before dropping out again. The self-insured, in its appeal, stresses certain "personal problems" the claimant was having with some of the therapy personnel but it is equally evident that the program involved "aggressive active therapy," which the claimant alleged caused considerable pain and swelling and that the claimant preferred more passive therapy such as massage. Dr. F, in a report of an evaluation on May 24, 2000, commented that the claimant would benefit from another four weeks in the pain management program.

The claimant at some point dropped out of Dr. F's program, retained an attorney, and on June 19, 2000, requested a change of doctors from Dr. P to Dr. B, stating that Dr. P "is not able to help me with my pain or therapy to help relieve my pain." The request was approved by the Commission on June 22, 2000. Meanwhile, Dr. F had completed a Report of Medical Evaluation (TWCC-69) and narrative, dated June 13, 2000, based on the May 24, 2000, evaluation, certifying the claimant at maximum medical improvement on May 24, 2000, with a 37% impairment rating (IR). Copy (c.c.) notations on that report show that it was sent to other people, including Dr. P, but not to either the claimant or the Commission. Dr. P signed the TWCC-69 indicating agreement with the rating on June 22, 2000, the same date the Commission was approving the request to change treating doctors. Dr. P subsequently completed a release to return to light duty on July 5, 2000.

The claimant testified that his condition had improved under Dr. B's care. Dr. GP, an associate of Dr. B, testified at the CCH and pointed out that Dr. B had found a non-union of the claimant's fourth rib and a loose surgical screw from one of the claimant's rib plates. Dr. B referred the claimant to Dr. K for surgery which was performed on October 10, 2000, to correct the problems. Dr. B used many of the same referral doctors that Dr. P had used.

The hearing officer, in her Statement of the Evidence, commented that "there was little to support that Claimant's request to change doctors was based on his knowledge that he had been released to return to work" Section 408.022 sets out the criteria for selecting and changing a treating doctor which guide the parties and the Commission. Section 408.022(d) expressly states that a change may not be made to secure either a new IR or a new medical report. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(h)(2) (Rule 126.9(h)(2)). A determination to approve or disapprove a change of treating doctors is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principals. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The self-insured had the burden to prove an abuse of discretion in the approval of a change of doctors. Texas Workers' Compensation Commission Appeal No. 93433, decided July 7, 1993. We see no abuse of discretion in the hearing officer's thoughtful and careful consideration of the evidence.

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge